

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 892**  
93RD GENERAL ASSEMBLY

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Reported from the Committee on Financial and Governmental Organizations and Elections, February 16, 2006, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4317S.02C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 408.015 and 408.555, RSMo, and to enact in lieu thereof two new sections relating to mortgage loans.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 408.015 and 408.555, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 408.015 and 408.555, to  
3 read as follows:

408.015. As used in sections 408.020 to 408.562:

2 (1) "Bank" shall mean bank, trust company, or bank and trust company;

3 (2) "Business loan" shall mean a loan to an individual or a group of  
4 individuals, the proceeds of which are to be used in a business or for the purpose  
5 of acquiring an interest in a business. The term shall also include a loan to a  
6 trust, estate, cooperative, association, or limited or general partnership;

7 (3) "Corporation" shall mean any corporation, whether for profit or not for  
8 profit, and including any urban redevelopment corporation;

9 (4) "Lender" shall include any bank, savings and loan association, credit  
10 union, corporation, partnership, or any other person or entity who makes loans  
11 or extends credit;

12 (5) "Monthly Index of Long Term United States Government Bond Yields"  
13 shall mean the monthly unweighted average yield for all outstanding United  
14 States Treasury bonds neither due nor callable in less than ten years, based on  
15 the daily closing bid prices in the over the counter market, as determined by the  
16 Board of Governors of the Federal Reserve System, published in the Federal  
17 Reserve Bulletin, and expressed in terms of percent per annum;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18           (6) **"Refused instrument" shall mean the return of an order to pay**  
19 **created by the refusal of a:**

20           **(a) Negotiable instrument as defined in section 400.3-104, RSMo;**  
21 **or**

22           **(b) Payment order as defined in section 400.4A-103(a)(1), RSMo;**

23           (7) "Residential real estate" shall mean any real estate used or intended  
24 to be used as a residence by not more than four families, one of whom is the  
25 borrower;

26           [(7)] (8) "Residential real estate loan" shall mean a loan made for the  
27 acquisition, construction, repair, or improvement of, or secured by, residential  
28 real estate. The term shall also include any loan made to refinance such a loan.  
29 No loan secured by residential real estate shall be considered to be a business  
30 loan unless such loan meets the requirements of subdivision (2) of this section  
31 and subdivision (2) of section 408.035.

          408.555. 1. Except as provided in subsection 2 of this section, after a  
2 default consisting only of the borrower's failure to make a required payment, a  
3 lender, because of that default, may neither accelerate maturity of the unpaid  
4 balance nor take possession of or otherwise enforce a security interest until  
5 twenty days after a notice of the borrower's right to cure is given both to the  
6 borrower and to all cosigners on the credit transaction nor, with respect to an  
7 insurance premium loan, give notice of cancellation until thirteen days after a  
8 notice of the borrower's right to cure is given; notice shall not be given prior to  
9 default. Until expiration of the minimum applicable period after the notice is  
10 given, the borrower or cosigner may cure all defaults consisting of a failure to  
11 make the required payment by tendering the amount of all unpaid sums due at  
12 the time of the tender, without acceleration, plus any unpaid delinquency or  
13 deferral charges. Cure restores the borrower to his rights as though the default  
14 had not occurred.

15           2. This section does not prohibit a borrower from voluntarily surrendering  
16 possession of property which is collateral and the lender from thereafter  
17 accelerating maturity of the loan and enforcing the note or loan and his security  
18 interest in the property at any time after default. If the lender has not already  
19 given the notice described in subsection 2 or 3 of section 408.554, he shall upon  
20 voluntary surrender of the collateral notify the borrower either personally or by  
21 mail at the borrower's last known address that he may owe additional money  
22 after the money received from the sale of the collateral is deducted from the total

23 amount owed.

24           3. No lender is bound by the provisions of subsection 1 of this section if  
25 default by the same borrower in connection with the same credit transaction with  
26 the same lender has occurred twice notwithstanding the cure of such defaults **or**  
27 **three times in the case of a second mortgage loan** except as provided in  
28 subsection 4 of this section.

29           4. Default by a borrower on a second mortgage loan may be cured by  
30 tendering the current obligation of the borrower at any time prior to the  
31 completion of the judicial or extrajudicial proceedings for foreclosure upon such  
32 real estate. For the purposes of this section, "current obligation of the debtor"  
33 means the aggregate of all installments scheduled to be due at the time of the  
34 tender, **late charges otherwise permitted by law, and expenses of**  
35 **foreclosures actually incurred by the lender for initiating a bona fide**  
36 **foreclosure**, notwithstanding any contractual provision for the acceleration of  
37 installment payments. A lender may take no steps to enforce a security interest  
38 in real property pursuant to a second mortgage loan until thirty days after notice  
39 of the borrower's right to cure is given; notice shall not be given prior to  
40 default. Cure restores the borrower's rights under the agreement as though the  
41 default had not occurred, [and any foreclosure in violation of this section is a  
42 class B misdemeanor] **except that only three defaults are permitted**. This  
43 section shall not affect the debtor's right otherwise to redeem such real property  
44 under any other provision of law.

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